

अण्डमान तथा  
Andaman And



निकोबार राजपत्र  
Nicobar Gazette

असाधारण  
EXTRAORDINARY  
प्राधिकार से प्रकाशित  
Published by Authority

सं. 67, पोर्ट ब्लेयर, बृहस्पतिवार, 26 मार्च, 2009  
No. 67, Port Blair, Thursday, March 26, 2009

अण्डमान तथा निकोबार प्रशासन  
ANDAMAN AND NICOBAR ADMINISTRATION  
सचिवालय/SECRETARIAT

**NOTIFICATION**

Port Blair, dated the 26<sup>th</sup> March, 2009.

No. 61/2009/F.No.3-84/96-Labour.—In pursuance of sub-section (1) of Section 17 of the Industrial Disputes Act, 1947 (Act No.14 of 1947) read with Notification No.LR-1(59)/55 dated 13<sup>th</sup> December, 1955 of the Govt. of India, Ministry of Labour and A & N Administration Notification No. 144/2008/F. No. 17-2/2007-Labour dated 7/10/2008, the Secretary (Lab.), Andaman and Nicobar Administration, hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands, Port Blair against the reference made to the Industrial Tribunal for adjudication vide Administration's Notification No. 3-84/96- Labour dated 13/03/97 in the matter of an Industrial Dispute between the Divisional Manager, Plantation Division, ANIFPDC Ltd., Hut Bay and the General Secretary, A & N Islands Forest Corporation Workers Union.

**IN THE COURT OF THE PRESIDING OFFICER  
LABOUR COURT  
ANDAMAN AND NICOBAR ISLANDS**

**Present: Mir Dara Sheko, Presiding Officer,  
Labour Court, Port Blair**

**I.D. Case No. 01 of 1997**

Shri Munnu Barrick and 7 others	...	First Parties
<b><u>Versus</u></b>		
Divisional Manager (Plantation) A & N FPDC Ltd., Little Andaman	...	Second Party

Monday, the 23<sup>rd</sup> day of February, 2009

**JUDGEMENT**

This I.D. case has arisen out of one reference made by the Assistant Secretary (Labour) under the order of the Lieutenant Governor, A & N Islands by notification dated 13/3/1997 in connection with F. No. 3-84/1996/Labour for adjudication on the following points:-

1. Whether removal of eight workmen namely, (1) Munnu Barrick, (2) Pascal Minj, (3) V. Muruganandam, (4) Rajeshwar Rao, (5) Kangal Barrick, (6) Dubla Ram, (7) Subash Mallick and (8) Bhaginath Biswas from services w.e.f. 12/6/1995 is legal and justified. If so, to what relief the workmen are entitled ?

DECISIONS WITH REASONS

On the basis of the reference, the first party workmen submitted statement of demand, fact of each in short is as follows:-

That the abovenamed workmen were serving under the Second Party as unskilled workmen and by office order dated 11/7/93 they alongwith many other workers were upgraded from unskilled to semi-skilled workmen on adhoc basis for the initial period of six months subject to its extension from time to time.

The workmen as a mark of protest against illegal recovery from the wages of harvesters (who used to give out turn according to availability of fruits in trees) had refused to accept the wages for the month of October, 1994 onwards and the First Party workmen were placed under suspension w.e.f. 24/10/1994 on the alleged reasons of less out turn in the work and accordingly the workmen remained under suspension till they were removed from the service and ultimately the Second Party issued order on 12/6/1995 by imposing the penalty on the workmen by way of removal from services of the corporation with immediate effect.

It is alleged that a good number of other workers, who had given the similar less out turn during the same period like the First Period have been continuing as harvesters without any punishment or recovery of wages and in their case, though proceeding were initiated by the Second Party alongwith these eight workmen, First Party, but the same was dropped later on without imposing and kind of punishment.

Virtually upon such averments, the First Party workmen prayed for an award by setting aside the removal orders and for directing the Second Party to reinstate all the eight workmen with all back wages.

The Second Party contested the case, filed written statement by denying inter-alia the contentions of the First Party and it is asserted that the First Party workmen were not suspended simply on the charges of less out turn, rather they were infact suspended for mis-conduct of instigating other workmen engaged in harvesting palm clearance to slow down the work to give less daily out turn, while they themselves were deliberately neglecting their duties by giving less out turn, and so according to the Second Party the case of the First Party having no merit is liable to be dismissed.

The history behind disposal of the I.D. case at this stage is, there was an award passed by this Tribunal on 10/11/1998 by directing reinstatement of all the eight First Party workmen and against said award, on being moved, High Court proceeding was held and the Hon'ble Court also was pleased to uphold the award against which the Second Party again moved before the Hon'ble Supreme Court by preferring Civil Appeal Nos. 7312-7313/2002, wherein the Hon'ble Supreme Court has been pleased to send the case back on remand by recording the order as follow, "ordinarily we have remitted the matter back to the Division Bench for consideration of the matter on merit but as we are satisfied that the Single Judge of the High Court as well as the Presiding Officer, Labour Court have seriously erred in passing the impugned award and judgement. With a view to do complete justice to the parties, we are of the view that all the impugned judgements and order should be set aside and the matter is remitted to the Presiding Officer, Labour Court for consideration of the matter afresh.....".

On receipt of the copy of Judgement of the Hon'ble Apex Court the operative part of the order was recorded on 18/1/2005, and the evidence both oral and documentary has been adduced by the parties. Consequently, the merit of the case is now to be finally adjudicated on the basis of same evidence on record.

Admittedly the First Party workmen alongwith some others were placed under suspension by the Second Party and proceeded with departmental enquiry. According to the allegation of First Party, the Enquiring Officer since was biased as yesman of the Second Party, so the First Party workmen were with the move to change the Enquiring Officer, and according to them since there was no change in the Enquiring Officer, the First Party did not participate in that enquiry. On the contrary it is the assertion of the Second Party that despite of service of notice the First Party workmen did not co-operate by joining in the enquiry and consequently the enquiry was completed by following all rules and norms and ultimately the First Party workmen have been terminated from services.

Amongst the First Party workmen Subhash Chandra Mallick as PW 1 is examined and cross-examined. His examination-in-chief, of course, relates to the averments of their statements of demand and during his examination several admitted documents have been marked respectively as Exbt. 1 to Exbt. 12, of which Exbt. 1 is the order of the Managing Director for the purpose of payment of minimum rate of wages in favour of the workmen. Exbt. 2 is the upgradation order (of course, on adhoc basis) dated 11/7/1993, Exbt. 3 is the order of the management in accordance with the award passed by the Tribunal, Exbt. 4 is the copy of the charge sheet received by one workmen, Exbt. 5 is the copy of letter of the workmen proposing change of the Enquiring Officer. Exbt. 6 again is the representation to the Divisional Manager and the Managing Director Exbt. 7 is the dismissible order, Exbt. 8 and Exbt. 9 relates to the enquiry report, Exbt. 10 is the another order of termination received by one workman Bikku Pradhan, Exbt. 11 is the letter of the First Party submitted before the Conciliation Officer and Exbt. 12 is the information received from Labour Commissioner by intimating the failure of the reconciliation.

Be it mentioned that apart from getting the abovenoted document exhibited through the evidenced of PW 1, many other documents with the marking Serial No. 13 to 24 have been exhibited, presumably due to the reason that the same were all admitted documents about the respective acts and action of the parties.

It is desirable that the employees ought to be docile, disciplined and co-operative with the employer and similarly the employer ought to be sympathetically co-operative with the employees, so that the work culture in the institution may remain intact not only for the beneficial and development of the institution, but also for getting everything good so far as the interest and the benefit of the employees. By citing such pragmatic view, I do not intend to mean that the employer in any situation will not be able to proceed with any act and action against any delinquent employee, rather I also do intend to mean that in that situation the employee is desirable to be moulded with co-operative attitude. But PW 1 during cross-examination admitted that they had got notice from the Enquiring Officer and they had no enmity with the Enquiring Officer D.K. Banerjee, but they did not attend the enquiry proceeding. So if the management relies upon any officer of his own for the conduction of enquiry, which is not supposed to be done by any stranger to the institution, then the adamant attitude of the First Party workmen obviously was not desirable and Second Party did not commit any wrong by proceeding with the enquiry ex-parte for non-participation of the First Party workmen.

There is no evidence before me that against the report or result of that enquiry there was ever any appeal before any Appellate Forum.

However, on the side of the Second Party the Divisional Manager is examined as DW 1, the Deputy Divisional Manager Mr. D.K. Banerjee, who was appointed as an Enquiry Officer of the departmental proceeding is examined as DW 2, another Divisional Manager, Forestry was examined as DW 3 and the Divisional Manager, Plantation Division is examined as DW 4. Now, from the ratio of the evidence of such DWs it reveals that there were three charges viz. (1) Less out turn

in comparison to previous performance, (2) Instigation to other workmen to remain abstained from work and (3) Loitering and keeping idle during duty hours and on conclusion of the departmental enquiry, according to the Second Party, the charges have been proved against the First Party workmen. DW 2, Mr. D.K. Banerjee stated that it was he, who submitted the ex-parte enquiry report on conclusion of the proceeding at the instance of the Presiding Officer, who had produced and submitted witness and documents. Although DW 2 was suggested that being influenced and being yesman of the Second Party he has submitted the enquiry report against the First Party workmen, (which equally has been denied by him), but despite of cross-examination at length nothing is revealed to say adverse against his statements in chief. Divisional Manager, Forestry, DW3 had simply gone through the materials of the proceeding of the enquiry and the regular Divisional Manager, Hari Parshad had taken the decision of termination and it was he (DW 3) who simply communicated the decision of the appointing authority to the concerned First Party workmen.

Now from within the evidence, even through DW 4 it could not be ascertained that the Second Party actually whether had served upon the First Party workmen the enquiry report, so as to enable them to raise any contention or otherwise as regard correctness of the finding of the Enquiry Officer contained in the report. Because DW 4 stated that through before inflicting punishment, show cause notice by accompanying with the enquiry report was required to be served upon each of the eight workmen, but he could not exactly remember whether said procedure was followed or not. But nonetheless of having absolute proof of supply of the enquiry report coupled with notice to show cause before termination of the workmen from service, although the First Party workmen are found to give a long fight only against the order of termination but nowhere they had adopted the Appellate Forum by challenging that enquiry report held by the Enquiring Authority duly constituted by the appointing authority and thereby they were terminated under the order of same authority. So virtually there is nothing before this court to show as to how the First Party workmen has become prejudiced by the enquiry report as well as final termination order served upon them by the appointing authority, because apart from non-supply of the contents of enquiry report, every other affairs had been taken place to the knowledge of the First Party.

Meanwhile we have received the landmark decision of the Hon'ble five Judges Bench of the Hon'ble Supreme Court reported in (2006) 4 Supreme Court cases page 1, State of Karnataka and others Versus Uma Devi and others. There is no iota of doubt, rather this is also an admitted position that the First Party workmen initially were unskilled labours under the Second Party and by the order dated 11/7/1993 (Exbt. 2) the First Party workmen alongwith many others were upgraded to the semi-skilled "A" category on and adhoc basis initially for a period of six months which is likely to be either extended for a further period of six months or to be regularized in the same grade depending upon their performance etc. So, even it cannot be guessed that so far as the employment of these First Party workmen there was ever any regular recourse of appointment, or alternatively, they were ever absorbed against any permanent vacancy. On the contrary, not only their appointment, but also their up-gradation were on adhoc basis i.e. having temporary status having no shape of permanence. Consequently, the predominant view is that any appointment, made without following the due process or the rules for appointment, did not confer any right on the appointees and eventually the court under its order cannot direct their absorption or regularization or re-engagement, far to making them permanent by way of reinstatement. From within the judgement of the Hon'ble Apex Court, quoting of a few lines may be relevant to determine the fate of this case viz., "merely because a temporary employee..... is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following the due process of selection

as envisaged by the relevant rules. It is not upon to the court to prevent regular recruitment at the instance of temporary employees, whose period of employment has come to an end, or of adhoc employees, who by very nature of their appointment did not acquire any right" to stay on or continue with service as a matter of right like permanent employee.

It is not, as if the person, who accepts an engagement either temporary or casually in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that there is not in a position to bargain-not an arms length-since he might have been searching for same employment so as to eke out his livelihood and accepts whatever he gets. But on the ground along it would not be appropriate that the person on adhoc basis got employed should be directed by the court to be continued permanently. But doing so it will be creating another mode of public appointment, which is not permissible.

So by the ratio of the decision on the face of the evidence on record when it has become apparent to me that the nature of employment as well as up-gradation of the First Party workmen was on adhoc basis, and, while their appointment under the Second Party was never permanent in nature, and while after completion of the departmental enquiry by placing the First Party workmen under suspension, ultimately the termination notice has already been served upon the First Party workmen, and while there is no proof that the First Party workmen had ever preferred any appeal against that order of termination coupled with the finding in the enquiry report, and lastly though not the least, the First Party workmen having failed to show any instance of becoming prejudiced for non-supply of the enquiry report and while the step of termination has been decided by the appointing authority itself after coming through the departmental process, I am of the view that interference of the Labour Court upon such act and action of the Second Party will not only be just and proper, but also shall create a very bad precedent which is never healthy for any institution like wise the institution of the Second Party. Be that as it may, since I failed to bring out any evidence of supply of enquiry report to either of the workmen, save and except, the termination notice, I am of the view that without extending any relief as prayed for by the First Party workmen the direction only should be given to the Second Party to supply entire copy of the report of disciplinary and/or departmental proceeding to each and every member of the First Party so as to enable them to take necessary step if any from their end, though at such late stage as regard correctness of the findings of the enquiry officer contained in the report as well as on the quantum of punishment by the appointing authority, if the same has not been barred by any other law of land.

So, when termination of First Party allegedly was an outcome of departmental enquiry, and although the status of employment in question was temporary, still, while the opportunity indicated above is supposed to be given to the parties in compliance to the observation and order of the Hon'ble Apex Court, the termination of the eight workmen from their services w.e.f. 12/6/1995 is held for the present illegal and unjustified, and the matter, of course, in the event of any reference or otherwise may be reopened for reconsideration of the Second Party only after compliances directed by the Hon'ble Supreme Court and reminded by the Court of the present status by passing the award in the case.

Hence, it is,

**ORDERED**

that the I.D. case is hereby allowed on contest and accordingly by passing the award it is declared that pending compliance by the Second Party in the light of observation made above in compliance to the direction of the Hon'ble Apex Court, the termination of the Eight workmen namely (1) Munnu Barrick, (2) Pascal Minj, (3) V. Muruganandam, (4) Rajeshwar Rao, (5) Kangal Barick, (6) Dubla Ram,

(7) Subash Mallick, (8) Bhaginath Biswas w.e.f. 12/6/1995 is neither legal nor justified, and thereby by virtue of such fresh award the order of suspension of the First Party workmen (instead of termination) shall be deemed to have been continuing up to the date of supply of the copy of enquiry report alongwith show cause notice afresh by fixing scheduled date for the purpose, and then the Second Party will be at liberty to consider the causes shown by the First Party either to reinstate or to keep on termination order under intimation to the First party at their discretion, and the termination from service if it is done eventually shall remain in force, subject to the result of the appeal, if any preferred by either of the workmen against the enquiry report, if it is not held barred by any other law, and for this, of course, the First Party workmen shall not be entitled to get any back wages on any ground in any case of either reinstatement or giving effect of termination from any date afresh after compliance of the Second Party, and, the Second Party shall comply with this award (i.e. communication of Enquiry Report) only within three months from this date of award, failing which, the law may take its own course to meet the situation as per demand.

Issue copy of this award to the Lieutenant Governor, Andaman & Nicobar Islands through Assistant Secretary (Labour), with reference to the notification dated 17<sup>th</sup> March, 1997 in connection with No. 97 F. No. 3-84/96/Labour.

Typed at my dictation & corrected by me.

Sd/-  
P.O.

Sd/-  
**(Mir Dara Sheko)**  
Presiding Officer  
Labour Court  
Andaman and Nicobar Islands  
23.2.2009

By order of the Secretary (Labour)

Sd/-  
**(K.M. Lohidakshan)**  
Assistant Secretary (Labour).